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No. 98-5881

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

BENJAMIN LEE LILLY,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Virginia

RESPONDENT'S APPENDIX

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Testimony of Tom Staeger / ect

Q. And what was going on at school right then?

A. Final exams were just about to occur.

Q. And after you, where were you all living?

A. We were living in College Park.

Q. And where did, where did you have to go to get the notes?

A. Over to Hethwood.

Q. And what were your plans after that?

A. Alex and I were going to go to the library to study and study up and get ready for our exams.

Q. How long had Alexander had the car at school?

A. Ah, since the summer before that, I believe.

Q. Do you recall how Alex was dressed?

A. Yes. He was wearing a, ah, a dark sweater, jeans and a, a black leather coat.

Q. Did he wear glasses?

A. Yes, he did.

Q. Did he have them on that night?

Testimony of Tom Staeger / Direct

A. Yes.

Q. Did he wear a watch?

A. Yes.

Q. Do you know if he had any money on him?

A. Ah, probably less than Ten (\$10.00) Dollars.

Q. And how old was Alex?

A. Alex was twenty-two (22).

Q. And what was he majoring in, if you know?

A. He was majoring in environmental science.

Q. And do you know what he was planning to do for break after the exams?

A. Just spend time with his family and maybe go over to Italy and spend time with his family over there.

Q. So you left College Park?

A. Correct.

Q. Drove across Blacksburg?

A. Yes.

Q. About what time was this?

A. Approximately 7:00.

Testimony of Tom Staeger / Direct

Q. At night?

A. Yes.

Q. And where did you go?

A. We went to Hethwood Express. It's a convenience store.

Q. Where did you go before that? I'm sorry.

A. I'm sorry. We went to a friend's house to receive the notes.

Q. Was that an apartment in Foxridge?

A. Yes, it was.

Q. And for the record, was that in the Town of Blacksburg?

A. Yes, sir.

Q. You got the notes? Correct?

A. Correct.

Q. And then you drove to the convenience store?

A. Yes, sir.

Q. And what happened after you got to the convenience store?

A. Ah, I, I went into the convenience store

and my attention was directed outside and the car was gone.

Q. Was Alex around?

A. No, he wasn't.

Q. Did you have anything else in the car of your own at the time?

A. Yes, I had my book bag and some of my books.

Q. And what did you do after you saw that Alex wasn't out there?

A. Ah, I, I, waited around for a little while to make sure he just didn't go off and then I called out, out to his cousin's, Vinicio Ingrao.

Q. And then what did you do?

A. We talked and I thought that, ah, we talked and I thought that maybe Alex might have, had gone back for something, but it turned out that he hadn't been there, so, it, I, I noticed a car.

Q. There was a car?

A. Yes, there was a car parked illegally on another, on the other side of the street and it looked

abandoned.

Q. Do you recall if the car was there when you pulled in?

A. Yes, it was there.

Q. Do you recall if there was anyone around at that time?

A. No, sir.

Q. And what did you do after you saw the car on the roadway?

A. I went over to look at the, to see if it had license plate numbers.

Q. And did it have any license plates?

A. No, sir.

Q. And after you saw that, what did you do?

A. I dialed 911.

Q. To which Police Department?

A. Ah, the Blacksburg Police Department.

Q. And did officers come?

A. Yes, sir.

Q. About what time was that?

A. Ah, about approximately 7:20, I think.

Q. And you reported to them what happened?

A. Yes, I did.

Q. Somebody drew your attention outside?

A. Yes.

Q. Did you know that person?

A. No, I didn't.

Q. Did the person tell you their name?

A. No.

Q. Was the person still around when the police came?

A. No, sir.

Q. Let me show you this, Tom. It's a green and brown leather Jantzen's Sport Backpack. Do you recognize that?

A. Yes, I do.

Q. Have you seen it since that day before today?

A. No, sir, I haven't.

Q. Now, do you recall the kind of car Alexander had?

A. I believe he had a Plymouth, K-car.

Q. Fancy one?

A. No, sir.

Q. I show you this photograph of a vehicle in a parking lot that was taken December the 6th, of 1995, and the Giles County Sheriff's Office, and for the record, Your Honor, we have stipulated that these photographs are accurate as to what they portray.

THE COURT: All right, sir.

Q. Do you recognize that car?

A. Yes, sir, it's Alex's car.

Q. Now, there's no hubcap on the passenger front, right front, and it looks like there might be something wrong with the wheel?

A. Yes.

Q. Do you know anything about that?

A. Before Alex and I got, made, made it to the convenience store, we made a wrong turn, and it was a rainy night and, ah, as we were turning, ah, to get back onto to the road that we had previously come from, we hit the curb and I think the alignment was out of whack after that.

Q. And what did Alex do when you went into the store?

A. Ah, Alex got out of the car and, to check and see if, to see if his wheel was flat or to see if his tire was flat and if, and if his alignment was straight or not.

Q. So, the last time you saw him was going to look at the tire?

A. Yes.

Q. I show you two (2) more photographs. These were taken on the night of December the 5th at the Hethwood Express or in that vicinity. I believe it's Huntington and Lane and Heather Drive. Okay. And what is that a photograph of?

A. That's the car that I saw from the convenience store that didn't have the plates on it.

Q. And this is the Hethwood Express with the lights behind it?

A. Yes, sir.

Q. And that's a further picture of the vehicle?

A. Yes.

Q. And was your, was Mr. Nolen there also?

A. Yes, he was.

Q. When did you know that Benjamin Lilly and the other two (2) were at your residence?

A. Well, do you, you're asking for a time?

Q. Yes. Was it day, night?

A. Oh, it was in the night. It was approximately around 7:30 at night.

Q. And how did you come to know that they were there at your residence?

A. Ah, I was asleep in the bed and I heard voices, so I got up.

Q. Okay. And where was everyone?

A. They were in the living room.

Q. And was that Mr. Nolen and Benjamin Lilly, Mark Lilly and the one they introduced as Gary Barker?

A. Yes, sir.

Q. And what were they doing?

A. Ah, they had some guns in the living room and was showing them to Warren.

Q. Okay. Now, by they, do you recall who had what gun or were they laying down or did anybody hold them?

A. Ah, Mark had, ah, I don't know the difference in guns. It's just a long gun, I don't know, and the hand pistol. There was two (2) long guns and a hand pistol.

Q. Did, did someone else have the other long gun? Do you recall?

A. I mean, ah, it's been so long. I'm not, I'm not sure.

Q. But there were two (2) long guns?

A. Uh-huh. Uh-huh.

Q. Did they have anything else with them?

A. Yes, sir.

Q. And what else did they have with them?

A. Ah, they had some old coins. Ah, a money clip. I'm not exactly sure what else was, I think that was all because I seen the bag that they had dumped out into the floor.

Q. They had some kind of bag?

A. Yeah, it was in a brown paper bag.

Q. Did they have anything to drink?

A. Yes, sir.

Q. And what did they have? Well, I mean was, did, what type of liquid was it?

A. Let me, goodness, there was different kinds. There was Jim Beam, Canadian Mist, ah, probably Jack Daniels and Bicardi Rum. There was several bottles.

Q. At least four (4) bottles?

A. Yeah.

Q. Were they small bottles, large bottles?

A. They were large bottles.

Q. And they weren't yours or Mr. Nolen's as far as you knew?

A. No, sir.

Q. And after you came into the living room and, and saw them, what happened?

A. I, well, the coins wasn't in the living room at that time.

Q. Okay. Well, tell me what happened when you went out to the see guns? And saw the guns?

A. Ah, I saw them, I started fussing because I know that Warren is not supposed to be around guns and he told me not to worry about it that they were taking their guns out right then, so I got me a drink, a drink of water and went back to the bedroom to put some clothes on.

Q. All right. Did you go back to the living room?

A. Yes.

Q. Were the guns there then?

A. No.

Q. Did you see who carried the guns out?

A. I know when I was going back to the bedroom Mark was gathering them up.

Q. Okay. And when you came back out, then what?

A. That's when Mark had a bag of coins that he had dumped out into the floor and was going through them and that's when, ah, there was a money clip laying there and he grabbed it up and said that that's mine. I want to keep that and he was just, they were just, him

and Gary was going through them and seeing who wanted what, you know, like dividing them up.

Q. Did you see Mr. Lilly take any of those items?

A. No, he was busy talking with Warren.

Q. How much longer did they stay?

A. Ah, it was approximately maybe twenty (20) minutes.

Q. And they left?

A. Yes.

Q. Do you know what they were driving at that point?

A. They were driving the car that I had sold Ben.

Q. The Cougar?

A. Uh-huh.

Q. Did they leave the paper bag or take it with them?

A. They took it with them.

Q. Did they put anything back in it?

A. They put the coins back in it.

Q. And was anyone else with him at the time?

A. His brother was with him and Gary Barker.

Q. Did you know his brother?

A. Yeah, I knowed his brother, but I didn't, that's the first time I ever met Gary.

Q. And do you remember which brother or what his brother's name was?

A. Mark.

Q. All right. And how did you know they had come to your residence?

A. How did I know? Oh, like, you know, he, he has come by several times.

Q. Okay. Did they knock on the door or were you outside?

A. No, they knocked on the door.

Q. And they came in?

A. Uh-huh.

Q. Did they have anything with them at that point?

A. Just, ah, some liquor.

Q. One (1) or more bottles?

A. Four (4) bottles.

Q. And what did they do after they came in?

A. Come in and set and talked, talked for a few minutes and then I got up to go to the bathroom and then when I come back they, through the trailer, that's when they had come in with the guns.

Q. Okay. Now, what kind of guns did you see?

A. A shotgun, a rifle, and a handgun.

Q. Now, was this an automatic handgun or a pistol revolver type handgun? If you recall.

A. I think it was a pistol type revolver. It's a, it's either a .32 or .38. I'm not for sure it's been so long ago.

Q. Okay. And where were these when you came back in the living room? Were they holding them? Were they on a table? On the floor?

A. Ah, they were laying on, us see, I think two (2), the rifle and the shotgun was laying on the couch.

Q. And where was the pistol at that point?

A. Us see. I'm not really for sure which one

(1) had the pistol in their hand.

Q. Okay. When you came back in, was there any discussion about the guns?

A. Yes, I told them to get them out of my house because I was a convicted felon.

Q. All right. And did they move them out of the house?

A. Yes.

Q. Who moved them out of the house?

A. Ah, I think, Mark took them out of the house.

Q. Now, before this when they were just sitting around and talking before the guns showed up, were they drinking any thing?

A. Yes, sir.

Q. From the bottles they had brought?

A. Yes, four (4) different fifths, different brands of liquor.

Q. All right. And then did they stay there after the guns were taken out of the trailer?

A. They probably stayed maybe fifteen (15),

A. Yes, I did.

Q. And that's the Ben Lilly you saw that night in the middle?

A. Yes, sir.

Q. And where did you see him?

A. He was in Cowboys.

Q. And about what time was this?

A. Approximately 6:00 p.m.

Q. Was he by himself or with anyone else?

A. No, he was with his younger brother, Mark, and Gary Barker or Barkley or -

Q. Okay. Did you know either his younger brother, Mark, or Gary Barker?

A. Yes, his, his younger brother, Mark, had worked for our construction company for about two (2) or three (3) months prior to the, that night.

Q. So, it was Mark Lilly you knew?

A. Mark Lilly I knew.

Q. And how did you come in contact with them?

A. Well, I, I was sitting in Cowboys and there was two (2) other people in there. There was the

bar tender and another person and the three (3) of them came in together all at one time and then Mark Lilly, of course, knowing me through work, asked me to come outside he wanted to show me something. So, I, I, walked out the door with him and approached the car that they were in. He says, go ahead and get in on the other side. I want to show you something. So, I got in the car and, and he reached like this (describing) and pulled out a .38 pistol and asked me if I wanted to buy it and I said, well, let me see it. So, he handed the pistol to me and I looked at it, and I says, how much do you want for it, and he says, a Hundred and Fifty (\$150.00) Dollars, and, I said, well, I don't have a Hundred and Fifty (\$150.00) Dollars, and he says, well, give, give me a hundred (100), that'll, that'll do, and I said, well, no, I asked him, I thought for a minute. While I was examining the gun, I had emptied the bullets out of the chamber and I hadn't noticed that there was one (1) bullet at that time missing out of the chamber and I had asked Mark if, if, in fact, the gun was hot, in other words, stolen, and he said, he waited for a little, a few seconds, and he says,

well, it's warm. And I said, Mark, is the gun hot? He said, yes, at which time I handed the gun back to him. I put the bullets back into the chamber and handed it back to him and about that time both Gary Barker and Benjamin Lilly came out and approached the car and at that time, I remember Gary reaching in the back seat and pulling out a 12 gauge shotgun and, ah, Ben Lilly was right behind him or close, close there, with him, and Ben Lilly said, put the, the God damn guns away, and that's pretty much all I remember the guns being put into the trunk of the car. I got out of the car and went back into Cowboys and they weren't there very much longer.

Q. Did they come back into Cowboys?

A. I don't believe so.

Q. So, you saw a shotgun and a pistol?

A. Yes, sir.

Q. And you said you unloaded the gun and it was a revolver?

A. Yes, sir.

Q. And then reloaded it?

A. I reloaded it, yes.

Testimony of Ron Lucas / Cross

A. Mark was in possession of the pistol and Gary had the shotgun out at which time Ben grabbed the shotgun from Gary.

Q. Do you know if he grabbed a pistol from Mark?

A. I can't, I can't say -

Q. Okay.

A. For sure.

Q. But he did have possession of the, the shotgun?

A. The shotgun, yes.

Q. Now, could it have been a 16 gauge shotgun and not a 12 gauge shotgun?

A. I don't believe so because from what I remember, I, I remember the, the pump action.

Q. All right. And it was a pump action shotgun, is that correct?

A. Right, yes.

Q. And Mr. Lilly took it back and, and put it in the trunk, is that correct?

A. That's correct.

Testimony of Gary Ray Price / Direct

inside the car.

Q. All right. And when you got there where Officer Tilley was, did you see a vehicle besides his?

A. Yes, I did.

Q. And where was that?

A. It was facing the direction in which we were travelling. In other words, it was coming toward us. It was on the side of the road. Had pulled off of the travelled portion of the highway and stopped.

Q. All right. And how far away was the person walking to Officer Tilley when you got there?

A. The -

Q. From the car.

A. From the car. He had parked his car maybe twenty yards, fifteen yards from, from the parked car and the subject was probably half way between the two vehicles some ten yards, ten or twelve yards.

Q. All right. Was this person walking normally or had they, were they in any particularly kind of stance or had their hands -

A. No, he was approaching with his hands up.

Testimony of Gary Ray Price / Direct

Mr. Tilley had a weapon drawn on the subject.

Q. All right. And what happened as he got to Officer Tilley's car?

A. As he came to the car, that's about the time I arrived. We took the subject to the rear of the car, Randy Tilley's car, placed him on the ground and, ah, searched him for weapons and handcuffed him and then placed him in Officer Tilley's vehicle.

Q. All right. And who was that person that was walking towards Officer Tilley's car?

A. He was identified as Benjamin Lilly.

Q. And do you see him in the Courtroom?

A. I do.

Q. And would you point him out, please?

A. Sitting between Max Jenkins and Christopher Tuck to my right.

Q. All right. Now, did you assist in the search for weapons -

A. Of Mr. Lilly?

Q. Of Mr., yes.

A. I think I, I covered Officer Tilley while

Testimony of Gary Ray Price / Direct

he patted him down and handcuffed him.

Q. All right. Do you know if a knife was removed from him?

A. It was. It was taken from Mr. Ben Lilly's, one of his pants pockets.

Q. Was that turned over to your evidence technician, Mark Skidmore?

A. It was, yes.

Q. All right. Did Mr. Lilly say anything as he approached you all or as you got him to the back of the vehicle?

A. He was asked, I think he was asked how many other people were involved and, ah, or was with him and if they were armed. Officer Tilley also said that he observed two (2) people fleeing the vehicle in addition to Mr. Lilly.

Q. All right. And did Mr. Lilly tell you if there was anybody else with you, with him?

A. He told us that there were three (3) other people and that they had assault rifles.

Q. Did he give you names at that time?

A. He furnished some names to us, yes.

Q. All right. Do you recall what they were now?

A. The only name I can recall that he furnished was a Rader subject. Either a Mark or a Mike Rader.

Q. All right. And did Mr. Lilly say anything else to you at that time?

A. He indicated that he had been hitchhiking and these, these subjects had picked him up and also that he was working as an undercover officer for the Montgomery County Sheriff's Office.

Q. After he told you he was working undercover for the Sheriff's Office, did he ask you to do anything for him?

A. He indicated that if we would take the cuffs off that he would get us the name and number to call to check on it.

Q. And what did you and the other police officers then do after you had Mr. Lilly in the, Officer Tilley's car?

Interview With
Benjamin Lee Lilly

Interviewer: Lieutenant Gary Price
Date: December 6, 1995
Time: 3:55 AM

G.P. State your full name.

B.L. Benjamin Lee Lilly.

G.P. L-I-L-L-Y?

B.L. Yeah.

G.P. No "E" in it?

B.L. No.

G.P. What's your mailing address?

B.L. Post Office Box 217, Riner, Virginia 24149.

G.P. And your date of birth?

B.L. 2/29/ of '68

G.P. And your social security.

B.L. 230-96-7040.

G.P. Okay. Mr. Lilly, I'm an investigator for the Sheriff's Department here and I'm gonna ask you some questions about some things that transpired over the last forty-eight hours. Because the answers you give me may incriminate you in some criminal activity, I'm gonna advise you of the Miranda Warnings and the rights that you have, and I want you to listen to them very carefully. If you have any questions on any of them, I will try to explain them to you so that you fully understand them. You have the right to remain silent. That means you don't have to talk to me. I can't make you talk to me. Anything that you do tell me, I can and I will use against you in the court of law on any charges that are brought. You have the right to have your attorney with you while you're being questioned and if

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you cannot afford to hire an attorney, one will be appointed to represent you before any questioning. You can decide at any time to exercise these rights and not answer any further questions or make any further statements. In other words, if you have an attorney retained or whatever, family attorney, you have the right to have them here. If you can't afford one, then the court will appoint one to be with you. If you decide to waive these rights and talk to me and then somewhere along the way you wanna quit, you can quit at any time. Do you understand that?

B.L. **No Statement Made**

G.P. Okay, did you understand those rights?

B.L. **No Statement Made**

G.P. Alright listen to this part, this is equally important, having been advised and fully understanding my rights, do freely and voluntarily, without threats, promises, pressure or coercing agree to talk with Gary Price a law enforcement officer. If you answer my questions, you're doing it on your own free will. I can't make you, I can't force you, and I'm not gonna trick you. Are you willing to answer some questions concerning your activities and those activities of Mark Lilly, your brother, and Gary Barker, a friend of yours, over the last forty-eight, twenty-four hours?

B.L. We'd been ah. . .

G.P. First of all, you willing to answer some questions concerning those?

B.L. **No Statement Made**

G.P. Get you to sign and date that. That states I read the rights and you're talking to me on your own free will.

B.L. You don't have any cigarettes with you do you?

G.P. No, I don't smoke and you got the same problem up here you had down stairs with those computers. I'll get you outta here and let you have another one here in a few minutes.

B.L. Today's date?

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G.P. 12/6/95.

B.L. We'd been ah, drinking quite a bit of liquor over the last few days.

G.P. And when you say "we", who you talking about?

B.L. The three of us was, been drinking quite a bit of liquor of the last few days.

G.P. Talking about Gary Barker and Mark,

B.L. Yeah.

G.P. your brother?

B.L. Yeah.

G.P. Okay, go ahead.

B.L. Okay, we'd been, you know, drinking liquor over the last few days, you know. And then I get to where I drink so much I pass out, you know, black out and all that. So, you know, a lot of stuff, you know, is like, you know, I'd be at one place, we'd be drinking. So, you know, I'd pass out, and then when I come to, be somewhere else, or we on the road or something, you know. And then tonight I'd went up with them, they picked me up up there coming down Prices Fork Road, in the little car, they pick me up, and then, going toward West Virginia. We's gonna go over in there, got some kin people live over there. I said, "Well hell, stop here and I'd get some beer."

G.P. And when you say "stop here" where was you talking about?

B.L. There's a store, leave right off 460.

G.P. Here in our county, Giles County?

B.L. I think so.

G.P. Okay, go ahead.

B.L. Okay, and then, and I said "Hell, stop here," you know "I'll get some beer." So then they said "Alright." you know, and I went in there, and I went back to the cooler, you know, where the beer was at, cause it was in the back. I went back to the cooler and the next thing I

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know, you know, here we come up in there and they got guns and shit, you know. And this old guy and old woman in there. The old woman had done run to the back of the store, and I told her, I said "Look, stay down" I said "God dam, stay down." I's going like this right here to them, I didn't know what the hell was going on myself, you know, I suppose to get some beer. And they come up in there running like that an shit, you know. I had a knife and I told them, I said "Look," you know, and I slung my knife and it stuck in the floor. And then I grabbed the knife and then I'd went up and then ah, Gary told me said, "Get that beer." I went like this right here, and the old guy, I seen it, he was sitting there at the dam, in between the counter and the wall and he hit it just like this right here, I didn't see no blood or nothing, right. I didn't here no shots fired or nothing so I know they didn't shot him, but I didn't know if they hit him or not, right. So then I seen him like this right here, and he was going like this right here, you know, just shaking all to hell an shit, right. And then Gary told said, "Get that beer." I went like this right here and then it's, he's heading out the door, and then I seen the man in the door like this right here, you know, he was pointing the gun at me then. So then, you know, I picked up about six beers and I had, I think it was a five dollar bill in my hand, and then I laid it down right there.

- G.P. You said Gary had the gun, what kind of gun did he have?
- B.L. I'm not for sure what it was, I just know it was a pistol.
- G.P. It was a pistol rather than a rifle shot gun he had?
- B.L. Yeah.
- G.P. What kind of finish did it have? Blue? Chrome? Stainless Steel?
- B.L. Just blue finishing, you know, just a regular pistol, you know, it wasn't nothing. . .
- G.P. Who's gun is that?
- B.L. I don't know.
- G.P. Had you seen it earlier that night, or?

Benjamin Lee Lilly

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- B.L. Huh uh, I hadn't seen that gun earlier that night, I seen the, I seen the rifle that he had had. And then ah, I'd seen it.
- G.P. Okay.
- B.L. And then ah, after that was over, I tried to get them to let me out, right. And then they came down to a place down here, the best I remember, it's next to a Dairy Queen, somewhere on the street where a Dairy Queen is.
- G.P. That'd be in the town of Pembroke.
- B.L. Yeah.
- G.P. Are you familiar with Pembroke?
- B.L. Not too much.
- G.P. But you know that's where you were on the. . .
- B.L. Yeah.
- G.P. okay, go ahead.
- B.L. Cause I go by there a lot, you know, going, you know, my kin people, a lot of my kin people live over in Summer's County, and I travel 460. We's there at a store and I's trying to get out before we got to the store, I said "Man, let me the fuck outta here, let me the fuck outta here." I said "I ain't in all this crazy shit." I said, "Let me the fuck outta here." Alright, then they, they whipped up in there, and they said "Look, you take off, we gonna shoot you." you know. And you know, someone who's drunk an shit, hard to tell what the hell they've been on an shit, you know, I didn't wanna take no chances, I sat there, you know. And then they had me up front, and I's setting there, next thing I know here comes a gun man. Said "You drive." And Mark said "What a minute, hold up." He says "Drive it." you know.
- G.P. Now who said that to you?
- B.L. Ah, it was both of them. "You drive it." you know.
- G.P. Who had the gun in their hand?

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B.L. I think ah, I think Mark had the gun in his hand that time.

G.P. Okay, and what happened after that.

B.L. I drove, shit. And then we was going down next to a dam river, they said get down to the river. I said "Hold on." you know, I didn't know the way to the place they call the "Sand bar." But anyway, it was next to, you go by a railroad and all that shit. So then ah, we went down there and then ah, wasn't long after that we's pulled over and all.

G.P. Pulled over by the police or?

B.L. Yeah.

G.P. Then what happened at that point?

B.L. They had took off running and then when I got out, I was eating a granola bar, you know, they've done scared the hell outta me, you know, I was, I'm trying to get straight, you know, so then I's trying to eat something. And then they ran, and then a cop, you know, he made me stick my hands up and shit like that right there, and I soon as I got up there, man, they started sticking guns in my head an shit, you know. I hadn't had a gun in my hand, no pistol or nothing, except for that sixteen gauge, and they got to playing with that an shit. And I unloaded it, and there was one shell left in it, and I put it in my pocket to keep them from getting it earlier on that evening. You know, cause I don't, I don't like fucking nobody playing around me drunk with guns, you know. That shit don't go, alcohol and guns and fucking women and all that shit, that shit don't go, you know. And that's the only thing I done wrong since I've been out, is handle that one sixteen gauge pump shotgun.

G.P. So then, when the police stopped you, you they put you, or stopped you and detained you, or whatever they done.

B.L. Yeah.

G.P. And the other two ran?

B.L. Yes.

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G.P. Do you remember what you told the officers there who those people were that ran?

B.L. Just Gary Barker, Mark Lilly, and Mike Raider. Cause he was in there earlier that evening.

G.P. So you told police it was four people counting you?

B.L. Yeah.

G.P. And three of them ran, even though there was two of you?

B.L. Two?

G.P. Two other than you. And you're saying and you're still saying there was four people that ran?

B.L. It was four of us, I can't rem., it might'a just been that two that ran. Because I can't remember exactly where he got out at. I don't know if it was right after that second place down next to the sand bar or what. But I remember he, he jumped out.

G.P. Was the forth one with you when ya'll was over at the first store where the old man and woman were?

B.L. **No Statement Made**

G.P. So there was four there?

B.L. Yeah.

G.P. Did he go, who all went into the store?

B.L. I went into the store to buy the beer, and I went back to the beer cooler, right. I was headed back that way, I didn't make it all the way back there, and I had money on me and all, and then the next thing I know, you know, he, they coming up in there with guns and shit. They done scared the hell outta both the old people and all that shit. I'm trying to tell the woman, you know, she's sitting there, and she's done turned white as a sheet, sitting there like this right here, said "Don't get up, don't get up." you know, I didn't want them to shoot either one of them. You know, "Don't get up, stay there, stay there." and all that shit. And then I told the, I hollared, told them "Ya'll get the fuck outta here." And then. . .

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- G.P. Now what was this about, you said you had a knife, what was the story on the knife?
- B.L. Alright, I had a knife on me, I said "Stay here, stay here." I said "Don't get up an shit." And I had a knife on me and I pulled the knife out and I said "Ya'll get the fuck outta here." and I had the knife in my hands and then I threw it and it stuck in the floor on the first isle up. I said "Ya'll get the fuck outta here." and then I pull, picked the knife up, pulled it out, closed it up and put it back in my pocket. And I was going up there, then that's when Gary told said "Get that rest that beer." I said "No man." And I was looking over there and I seen the old guy he was just shaking, I didn't see no blood or nothing so I don't figure they hit him, he's just sitting down in between the counter and the wall. And then the next. . .
- G.P. And what all did they take outta there other than the beer?
- B.L. I think they got a little bit of beer and ah, I think they got some chewing tobacco and shit like that.
- G.P. Did they get any money that you know of?
- B.L. Not as I know of, I didn't see no, see I bought a case of beer right up there on at McCoy in ah, from ah, it's right before you get to, you know where the New River Junction Store is?
- G.P. Uh huh.
- B.L. Alright it's right before you get there, you know, before you go down hill and make a right. Alright, it was off of ah, I can't think of the name of the store but there's usually an old woman that runs it. I went in there and there was a heavy set girl tonight.
- G.P. And you bought a case of beer there?
- B.L. I bought a case of beer and two packs of cigarettes.
- G.P. Was it pretty crowded in there when you were there?
- B.L. Oh, no.
- G.P. Any other customers?

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- B.L. Ah, no I didn't really pay attention.
- G.P. The knife that you pulled out at Eggleston, is this the knife?
- B.L. That's it.
- G.P. Okay. And you pulled it out and told your partners to get outta there. . .
- B.L. Yeah.
- G.P. and then you threw it and stuck it in the floor, what was the purpose of throwing it and sticking it in the floor?
- B.L. I tried to throw it at them.
- G.P. Throw it at your partners?
- B.L. Yeah, cause I didn't, you know, I don't play that shit man. Get up in there and fucking with old people like that, make them have a heart attack or somethin like. They fucking die, and shit you're getting a fucking murder charge and all kinds of shit. You ain't even suppose to be doing no shit like that to begin with, you know what I'm talking about?
- G.P. So what was the original purpose of stopping at that store?
- B.L. To get beer.
- G.P. Even though ya'll had just stopped and bought a case of beer earlier?
- B.L. Yeah, because we was getting ready to go across the state line and all to go in West Virginia. I said "Well hell, let me get some more beer, and then we'll have enough to do us till tomorrow."
- G.P. So ya'll didn't discuss prior to that, let's go in there and rob this store?
- B.L. Hell no.
- G.P. And up to that point you didn't know that he had a pistol?

B.L. Huh uh. And then I'd say "Hell no." you know. That, if they would've been talking shit like that, I'd been, shit. I'd tried my damdest to get away from them.

G.P. What time did you get with Gary and Mark that day, yesterday?

B.L. Ah, maybe around seven or eight, something like that, nine or something.

G.P. In the morning?

B.L. No, in the evening is when I got back with them.

G.P. Was you with them earlier in the day?

B.L. Yeah, yesterday morning I was with them.

G.P. What were ya'll doing then?

B.L. Just drinking a little bit, drinking a little bit of liquor and all.

G.P. Were you riding around or were you at somebody's house?

B.L. We were ah, at ah, a couple of trailer courts, I can't remember their names or nothing.

G.P. How were ya'll getting from place to place that day, yesterday?

B.L. Okay yesterday ah, some guy in a tan van from Blacksburg gave us a ride, him and his girlfriend. I rode around with them looking for some kind of a pregnancy crisis place or something.

G.P. So the guy in a tan van and his girlfriend, you and Mark and Gary, ya'll just riding around.

B.L. We was looking for that place cause she had an appointment there and we was all in Blacksburg trying to find it.

G.P. And then what did they do, they drop you off somewhere, and you got back with them later that evening?

B.L. Yeah.

G.P. What time they drop you off that day?

B.L. Maybe around about one-thirty, two o'clock something like that.

G.P. And then what time did you get back with them?

B.L. It was around about, maybe seven or eight.

G.P. Where'd they pick you up?

B.L. It's was on ah, Prices Fork Road.

G.P. At a residence?

B.L. No, I was hitchhiking.

G.P. They just come by and see you?

B.L. Yeah.

G.P. What were they driving then?

B.L. Some kind of little maroon car.

G.P. And then from there, that's when ya'll, who's car was it?

B.L. I'm not for sure.

G.P. You didn't ask them or anything?

B.L. No.

G.P. You ever seen it before?

B.L. Huh uh. But hell, them two boys they don't, shit, they fucking buy a car every other day or something. Shit they give a hundred dollars for a car and then run the hell out of it, you know. I just figured they just wanted to ride, you know.

G.P. Did you end up with any of the money out of the first robbery over where the old couple were?

B.L. No.

G.P. They didn't give you money whatsoever?

B.L. No. Number one I wasn't trying to be involved, you know. I just got out on parole. Course now. . .

G.P. You and Gary get along pretty good, or you and your brother get along pretty good?

B.L. Me and Gary get along alright. Me and my brother, you know it's, we're about ten years difference in the age and, you know, sometimes we get along, sometimes we don't, you know. But ah, if I wasn't (not understandable) all this shit I believe I'd been better off, I would've waited there with them two old people till the police got there, you know what I'm saying. Them fella's riding around with them earlier, God Dam, you know.

G.P. When you came into Giles, they picked you up hitchhiking and ya'll rode into Giles, who was driving the red car?

B.L. I'm thinking Mark was.

G.P. And who would've been up front passenger side?

B.L. Gary.

G.P. And you got into the back?

B.L. Yeah.

G.P. And when you left the first store over there, who was driving then?

B.L. Ah, Gary.

G.P. And you were in the back?

B.L. Yeah.

G.P. And then Mark was a passenger?

B.L. Yeah. See what happened, I jumped in the back, because then they kept hollering "Come on, an come on." And I was up there and I wanted to stay and make sure that they wasn't, you know, hurt or nothing. I was up there at the counter, Gary told me, said "Get the beer." I went like this right here, nodding my head, no. Next thing I know, you know, they still standing there dam guns waving and shit, you know. I didn't know if they was gonna shoot me

or not, I grabbed six beers and I had some money in my hand the I dropped it on the counter.

G.P. When ya'll left that area and you went to the second store, what was the purpose of stopping at the second store?

B.L. I'm not for sure, I was trying to get away from them.

G.P. Were they, had they discussed going in there and robbing it?

B.L. They didn't say a word, and then they'd stop, and then I was trying to figure out how the hell to get away from them. And there was two or three vehicles out there, there was trucks and shit I didn't think they was gonna do no crazy shit like that. All them vehicles and all, and I was trying to figure out how the hell to get away from them.

G.P. So them two went in a store, left you in the car. . .

B.L. Yeah. And then when they came back out then these, I got a fucking gun in my ears, you know.

G.P. And they told you to drive on?

B.L. Yeah.

G.P. As you was driving down back down toward the river road, you remember a shot being fired, or a car chasing you?

B.L. I remember somebody said, the car was chasing, getting away from them, and I wasn't, I was trying, you know.

G.P. You don't remember hearing a shot, though?

B.L. I was too dam scared.

G.P. Okay.

B.L. To be honest with you, I was too dam scared.

G.P. And just on down the road a little short piece where a car, where the police officers came up on you, you tell me that you stopped or did the car break down on you?

B.L. It had broke down.

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G.P. Just plain quit running?

B.L. Yeah. Over heated or somethin.

G.P. What were ya'll doing at that time? Were you getting outta the car, were you just gonna stay with it, or?

B.L. I was sitting there, didn't know what the hell to do, and then about the time it broke down then the cop pulled up.

G.P. You got outta the car?

B.L. Yeah, I was getting out.

G.P. You were driving it that time?

B.L. Yeah.

G.P. Did you bring a shotgun out with you and then place it back in the car when you saw the officer?

B.L. No.

G.P. So if the officer said that when you got outta the car,

B.L. No ah, Gary grabbed the rifle, and I was saying "Wait a minute," I said "Man, that's a policeman and I setting here in a, unlicensed". Then the police hollering "Get the hell outta the mother fucker, get the hell outta that car mother fucker." And then I was eating a dam granola bar, and then when I got out then they fucking put guns to head and shit. And I told them, I said "Look man, I'm just eating something." I put my hands up like this right here, and then he said "Come here." I started going up there to where the lights was on the vehicle, and I started to get down, you know, to where the lights was, they said "No, I said come here." And then when I got there, then they slammed me to the ground, and I had all kinds of guns around my head.

G.P. The, was there a shotgun in the front seat where you were when you stopped and the police apprehended you?

B.L. I can't remember for sure, I can't remember, sir.

G.P. Anything else you wanna tell me?

B.L. No, I can't think of nothing.

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G.P. Okay, interview will, let me ask you, have you at any time today fired a weapon or fired any, either the rifle, the pistol, or the shotgun?

B.L. No.

G.P. You didn't fire at anything today?

B.L. Huh uh.

G.P. Okay, interview will end at 4:17.

Transcribed by:

Christy Cumbee

A. He signed a written form, yes, sir.

Q. So, he was filling parts of it out as you were asking him those questions?

A. The only writing he would have done would have been the, where he put his signature at the bottom.

Q. All right. Now, you asked him if he fired a gun right at the end?

A. Yes, sir, I did.

Q. And after the tape was off, did you ask him to do anything or to check something about firing a gun?

A. I asked him if he would submit to a GSR Kit performed by the evidence tech to recover any powder residue that would have been on his hands.

Q. Okay.

A. The firing of any weapons normally leaves some powder residue on your hands.

Q. All right. Now, what do you mean by GSR. What does that stand for?

A. Gun shot residue.

Q. So, you would of had the evidence tech

come in?

A. Yes, sir. He would have conducted the test necessary to recover the residue.

Q. And when you asked Benjamin Lilly that, what did he do?

A. Mr. Lilly was handcuffed during the interview for the safety of, of the officer. Mr. Lilly begin rubbing his hands in this manner right here (describing with hands).

Q. Had he been doing that before?

A. I had not noticed him, no, sir.

Q. Now, Mr. Lilly you talked to I believe beginning about 3:55 in the morning or thereabouts? Whatever you indicated on the tape?

A. At 3:55 a.m.

Q. Let me go back to the scene now where the vehicle was found and you came in contact with Mr. Lilly. How much longer did you stay at the scene?

A. After Mr. Lilly was placed in the police car, probably ten to twenty minutes, within ten to twenty minutes, a second subject was located and brought to a

Testimony of Gary Ray Price / Direct

police car and he was transported, I'm talking about the second person, Mr. Barker was transported to the Sheriff's Office in my vehicle by myself.

Q. Okay. You took him back to the Sheriff's Office to begin with?

A. Yes, sir, I did.

Q. And did you have an interview with Mr. Barker?

A. Yes, sir, I did.

Q. And what was the general subject matter of the interview to begin with?

A. The two (2) armed robberies of our county and who participated.

Q. All right. Now, when you got back to the Sheriff's Office, did you learn anything about the maroon car that you had come upon on, with Mr. Lilly?

A. I was informed by our dispatchers that Blacksburg had inquired about a tag number we had run on the red car and that that particular vehicle had been reported stolen and the owner, or the driver abducted in their jurisdiction earlier that evening.

Testimony of Gary Ray Price / Direct

Q. Now, after you completed talking to Mr. Barker about the events in Giles County -

A. Yes.

Q. Did you bring up the subject of the car? The car they were found near -

A. I asked him whose car that was.

Q. And at that point, did you know what had happened to the owner of the vehicle, or the driver of that particular vehicle missing from Blacksburg?

A. No, I did not. I was aware that the car had been taken and the owner or operator had been abducted, but we did not know the welfare of the abducted subject at that time.

Q. And how did Mr. Barker react when you brought that subject up?

A. Became very emotional.

Q. Now, what do you mean by that? What did he do?

A. Got very excited. It seemed like he was crying or very near tears and indicated that a bad thing had happened.

and at that time Investigator Price had missed the road and I had gotten in front of him and was travelling down that road.

Q. All right. And where did you come in contact with another vehicle?

A. It was shortly, it was approximately I'd say a eighth of a mile, could be a eighth of mile down that road, I met the maroon vehicle coming towards me.

Q. Okay. Now, is this a straight stretch of road or a little curve, what is it?

A. It was, I was coming down a hill and he was coming around the curve and then it came into a straight stretch.

Q. All right. And you saw the vehicle moving?

A. Yes, sir.

Q. And then what happened?

A. And the vehicle was moving towards me and then it came to a stop, pulled off to the right-hand side of the roadway.

Q. All right. And were you still moving at

that point?

A. Yes, sir, I was still moving then I pulled my patrol car cross ways in the road -

Q. All right.

A. And stopped.

Q. Did you see any persons around the vehicle?

A. Yes, sir, two (2). The one (1) in the back and the driver, they jumped out of the vehicle and ran towards the rear of the vehicle.

Q. All right.

A. And the one (1) on the passenger's side exited the passenger's side of the vehicle.

Q. Okay. And then what happened?

A. He had, ah, it was a shotgun that appeared -

Q. Okay. Now, by he, who do you mean by he?

A. Ah, Mr. Lilly, Mr. Ben Lilly.

Q. All right. The gentlemn over there in the middle?

A. Yes, sir.

Testimony of Randy T. Tilley / Direct

Q. And where did he come from?

A. He came out of the passenger's side front seat of the vehicle.

Q. All right. And then what happened?

A. He had the shotgun in his hands and he turned towards me and that's when I ordered him to put the shotgun down.

Q. And how did, how was he holding it?

A. He was holding it. He didn't have it up to shoulder. He just had it in his hands like that (describing).

Q. Sort of across?

A. Yes, sir.

Q. And you ordered him to place it down?

A. Yes, sir, I did.

Q. Did you -

A. Probably two (2) or three (3) times, I told him to put the shotgun down and he laid it back onto the front seat of the vehicle.

Q. All right. Was there, the door open at that point?

Testimony of J. R. Rakes / Direct

Christiansburg.

Q. And you went to that area?

A. Yes, I responded to Whitethorne.

Q. You were given a specific area to go to?

A. Yes, I was.

Q. And where exactly is Whitethorne located?

A. It's in the McCoy area of Montgomery County.

Q. And where was the area they asked you to go? Was it on a main road?

A. It was the main road to Whitethorne, which would have been the, leads into the property there that the Norfolk and Southern has.

Q. All right. And when you got there, did you stay on a state maintained road or did you go off onto private property?

A. I went off onto Norfolk and Southern property.

Q. You cross over railroad tracks I think?

A. I just crossed a concrete bridge with a creek under it.

Q. Okay. And as you pulled up, what did you see?

A. As I pulled up, I, I found a white male laying against some steel. The clothing that he had on was a pair of socks and his underwear.

Q. Did he have any visible injuries?

A. Yes, he did.

Q. Deputy, I'm going to show you Commonwealth's Exhibit Number Sixteen (16). Would you look at this, please? Is that the scene when you got there?

A. Yes, it was.

Q. And after you got there, what did you do?

A. After finding the gentleman, I notified my sergeant by radio that I had located him and upon his arrival, we secured the scene.

Q. Okay. How did you secure the scene?

A. We took yellow police tape and ran around the, ah, from where he was at around some of our vehicles to block off an area.

Q. All right. Now, these boxes are whatever

removed the body, if we needed to come back later and take measurements or anything like this, ah, I'd, I'd know where it was at that time.

Q. Okay. And a video tape was made before the body was moved?

A. Yes, sir.

Q. And were any still photographs taken?

A. Yes, sir, they were.

Q. And what was done to examine the secured area?

A. Basically just walking around. We lit it up, ah, and took some photographs and walked around looking. Ah, I couldn't find anything except for the blood and the body. I couldn't, couldn't see any other evidence there.

Q. And what was the weather that night?

A. Windy and cold.

Q. And what about ground conditions?

A. Ah, it was dry at that time. It, ah, I think it started snowing later the next day.

Q. All right. So, at that night other than

Testimony of O. P. Ramsey / Direct

the body and the photographs and the video tape, there was no other evidence found to remove at that time?

A. Ah, no, sir.

Q. Okay. Chief, I show you Commonwealth's Exhibit Number Sixteen (16). Is that the scene as you found it when you got there?

A. Yes, sir.

Q. And there's some, it looks like strips of something on the ground there?

A. Yes, sir.

Q. And what are they?

A. Ah, that's where I had laid out where the blood zigzagged leading over to where the body was.

Q. Okay. So, that's about where it began is, is where we can see in the photograph?

A. Ah, yes, sir. The, the way the wind was blowing, that's the reason I marked it later. Some of this had got moved, but I think I got this before the, the wind had blowed, because it was going in a zigzagged and over and then into there like he was staggering before he fell.